

11

Introduction to the Rules



11.1 Introduction

11.1.1 Content

The three chapters following this contain rules regulating the use of Otago's water and land resources in order to achieve the objectives of this Plan. The rules determine the status of any particular activity hence whether a resource consent is required for that activity to be carried out, and may specify whether the resource consent application needs to be notified.

The guide to the rules section introduces the terminology used in the rules and indicates those types of activity which require a resource consent. Notification of resource consents and consent conditions are also briefly discussed.

This chapter also contains an index to the Regional Plan: Water rules (see Table 2) and an outline of this Plan's relationship to district plans and other regional plans. A proposed activity may require consent under these plans. There may also be obligations that have to be met under other legislation, which this Plan does not replace or override. Some of this legislation is listed in section 11.3.1 of this chapter.

11.1.2 Rationale

The following activities can occur only if they are expressly allowed by a rule in a regional plan, or in any relevant proposed regional plan or by a resource consent (Sections 13(1), 14 and 15 of the Resource Management Act 1991):

- The use of water;
- The taking of water;
- The damming or diversion of water;
- The discharge of water into water; or
- The discharge of contaminants into water or onto or into land in circumstances which may result in that contaminant entering water;

and, in respect of the bed of any lake or river:

- The use, erection, placement, alteration, reconstruction, extension, removal or demolition of structures;
- Any bed disturbance;
- The introduction of vegetation;
- The deposition of any substance; and
- Any drainage or reclamation.

Under Sections 9(3) and 13(2) of the Resource Management Act 1991, no person may use any land in a manner that contravenes a rule in a regional plan or any proposed regional plan, unless that activity is expressly allowed by a resource consent or is an existing lawful use. This Plan includes rules to control the effects of particular land uses on Otago's water resource.

11.1.3 Guide to using this chapter

An activity may need to comply with more than one rule in this Plan so it is essential all relevant rules in Chapters 12, 13 and 14 be examined. Table 2 provides a guide to find the relevant rules for any particular activity. Once the status of a proposed activity is determined from the rules, Figure 4 can be used to find out whether resource consent is required.

11.2 Guide to the rules

11.2.1 Status of activities

The rules within this Plan determine the status of any particular activity and whether a resource consent is required for that activity to be carried out. Each of the rules specify whether a particular activity is:

- Permitted;
- Controlled;
- Discretionary;
- Non-complying; or
- Prohibited.

These classes of activity are described below. Figure 4 illustrates the difference between these classes and which require resource consents.

11.2.1.1 Permitted activity: No resource consent required

Activities specified as permitted activities within the rules of this Plan can occur without the need to obtain a resource consent, provided they comply with the conditions stated in the rule.

11.2.1.2 Controlled activity: Resource consent required but always granted

Activities specified as controlled activities within the rules of this Plan are activities which require a resource consent from the Otago Regional Council, but which will always be granted by the Council. The application for a resource consent will be assessed according to specified matters over which the Council will exercise its control. The resource consent may include conditions relating to these matters.

11.2.1.3 Discretionary activity: Resource consent required

Activities specified as discretionary activities within the rules of this Plan are activities which require a resource consent from the Otago Regional Council, but which the Council has retained its discretion as to whether it will grant the resource consent. The Council will, in considering any application for a discretionary activity, be guided by the objectives and policies contained within this Plan, the Regional Policy Statement for Otago, and the requirements of the Resource Management Act 1991. Conditions may be included on any resource consent granted.

Two types of discretionary activity exist, with the rules specifying which of these two discretionary activities applies in each case:

(a) **Restricted discretionary activities**

Restricted discretionary activities are those for which the Otago Regional Council has restricted the exercise of its discretion. This means that the Council limits the range of matters it considers and only sets conditions (if the resource consent is granted) that are relevant to the matters to which it has restricted its discretion. The relevant rules of this Plan list these matters.

(b) **Discretionary activities**

Discretionary activities are those for which the Otago Regional Council retains full discretion. The Council will exercise its discretion in accordance with the relevant policies of this Plan. If the resource consent is granted the Council may set any conditions that fall within the Council's powers under Section 108 of the Resource Management Act.

11.2.1.3A Non-complying activities: Resource consent required

Activities specified as non-complying within the rules of this Plan are activities which require a resource consent from the Otago Regional Council, but which the Council may grant or decline the resource consent. The Council will, in considering any application for a non-complying activity, need to be satisfied that the effects of the activity on the environment will be minor or the activity will not be contrary to the objectives and policies of the Plan and any proposed Plan in respect of the activity. Conditions may be included on any resource consent granted.

11.2.1.4 Prohibited activity: No resource consent will be granted

Activities specified as prohibited activities within the rules of this Plan may not occur in Otago and no resource consent shall be granted for these activities.

The definitions of these terms are consistent with the meaning given to them in the Resource Management Act. The Resource Management Act definitions of these terms are contained in the Glossary.

11.2.2 Notification of resource consents

Any resource consent application received by the Otago Regional Council must be **publicly notified** under Section 93 of the Act, unless provided for by Section 93(1), 94(1) or 94D. Public notification allows the community to be involved in assessing whether the proposed activity may cause adverse effects.

Some rules in this Plan expressly permit consideration of a resource consent application **without public notification** in accordance with Section 94D. An

application may be notified even when rules in this Plan state that it may be non-notified, if the Council considers special circumstances exist, or if the applicant requests.

If the Council is satisfied that:

- The adverse effects of the proposed activity on the environment will be minor; and
- Every person who may be adversely affected by the activity has given written approval to the activity,

the application **may not be notified**. An application will be notified if the applicant requests, or the Council considers there are special circumstances.

If the Council is satisfied that:

- The adverse effects of the proposed activity on the environment will be minor; but
- All persons who may, in the opinion of the Council, be adversely affected by the activity have not given their written approval,

then notice of the application **may be served** on all persons who may be adversely affected, whether they have given their written approval or not. The application may not be publicly notified. However, the rules in this Plan may provide that notice for an application for resource consent for a controlled or restricted discretionary activity may not need to be served on affected persons.

11.2.3 Resource consent conditions

In granting a resource consent, the Otago Regional Council may include conditions on the consent in accordance with Section 108 of the Resource Management Act. Conditions can be used to ensure that any actual or potential effects of the activity on the environment are avoided, remedied or mitigated.

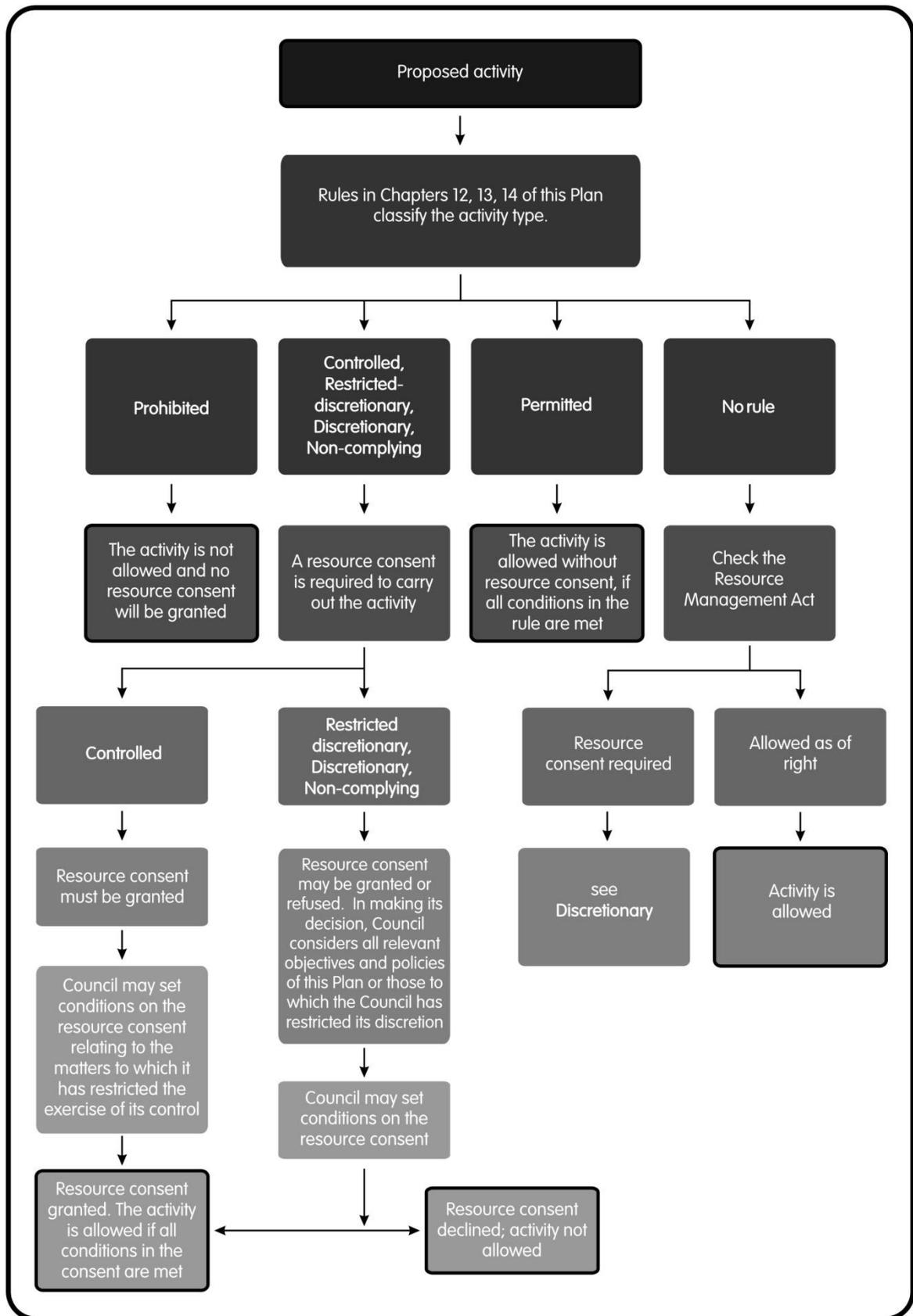


Figure 4: Key steps to determine whether a proposed activity is allowed

11.2.4 Index to the rules

Table 2 provides a guide to find the relevant rules for any particular activity.

Table 2: Index to Regional Plan: Water rules

If the activity involves any of the following	See the following rules of the Plan	
<i>Water use and management</i>		
Applications to take water	12.0	Applications to take surface water and groundwater
The taking of:		
• Surface water	12.1	The taking and use of surface water
• Groundwater	12.2	The taking and use of groundwater
• The damming or diversion of water	12.3	The damming or diversion of water
<i>The discharge of water or contaminants, in terms of:</i>		
• Human Sewage	12.A	Discharge of human sewage
• Hazardous substances, hazardous wastes, specified contaminants, and stormwater; and discharges from industrial or trade premises and consented dams	12.B	Discharge of hazardous substances, hazardous wastes, specified contaminants, and stormwater; and discharges from industrial or trade premises and consented dams
• Other discharges	12.C	Other discharges
A wetland identified in Schedule 9 or any wetland above 800 metres in altitude	12.1–12.3 12.A–12.C	Activities affecting water
<i>Land use on lake or river beds or Regionally Significant Wetlands</i>		
Structures	13.1 13.2 13.3 13.4	The use of a structure The erection or placement of a structure The repair, maintenance, extension, alteration, replacement or reconstruction of a structure Demolition or removal of a structure
Disturbance	13.5	Alteration of the bed of a lake or river, or of a Regionally Significant Wetland
Reclamation		
Deposition of substances		
<i>Vegetation:</i>		
• Introduction of vegetation to the bed of a lake or river, or of a Regionally Significant Wetland	13.6	The introduction or planting of vegetation
• Removal of vegetation from the bed of a lake or river, or of a Regionally Significant Wetland	13.7	The removal of vegetation
<i>Land use other than in lake or river beds</i>		
The construction of a bore	14.1	Bore construction
Drilling	14.2	Drilling
Defences against water	14.3	The erection, placement, extension, alteration, replacement, reconstruction, demolition or removal of a defence against water
Structures other than defences against water	14.4	Structures other than defences against water

Note: District Plans may also have rules relating to these activities.

Although important, rules are not the only means of achieving the objectives of this Plan. Chapter 15 details methods other than rules that are intended to be used in this regard.

11.3 Relationship to other legislation and plans

11.3.1 Other legislation

Other legislation may have implications for the management of Otago water resources. This Plan does not replace or override that legislation, and nothing in these rules removes obligations under any other legislation, including the:

- Soil Conservation and Rivers Control Act 1941;
- Historic Places Trust Act 1993;
- Conservation Act 1987 and related legislation;
- Freshwater Fisheries Regulations 1983;
- Lake Wanaka Preservation Act 1973;
- Ngai Tahu Claims Settlement Act 1998;
- Local Government Acts 1974 and 2002;
- Biosecurity Act 1993;
- Building Act 2004, the Building Code and relevant Building Regulations;
- Health Act 1956;
- Transit New Zealand Act 1989;
- Crown Minerals Act 1991;
- Hazardous Substances and New Organisms Act 1996 and related regulations; and
- Trespass Act 1980.

11.3.1A Water conservation orders

Water permits or discharge permits granted under this Plan must be consistent with any relevant water conservation order. Those operative in Otago include:

- The Water Conservation (Kawarau River) Order 1997; and
- The Water Conservation (Mataura River) Order 1997.

11.3.2 District plans

District plans may also have rules dealing with the activities regulated by the rules in this Plan. District plans regulate subdivision and the effects of land use activities, including activities on the surface of water bodies. Nothing in this Plan affects any requirement for compliance with a district plan.

11.3.3 Regional plans

Other operative regional plans deal with air, the coast and waste. These plans also establish permitted activities or require resource consents for certain activities. The provisions of this Plan are in addition to the requirements of any other regional plan.

11.3.3.1 Regional Plan: Air

Consents may be required under the Regional Plan: Air for the following activities:

- Domestic heating;
- Burning of waste;
- Discharges from industrial or trade premises;
- Abrasive blasting;
- Discharges from factory farming;
- Discharges of agrichemicals; and
- Discharges of water vapour, heat and energy.

This Regional Plan: Water also deals with the discharge of some of the above contaminants, but only where they are discharged to water or land in circumstances which may result in a contaminant entering water.

11.3.3.2 Regional Plan: Coast

This Regional Plan: Water does not consider activities in the coastal marine area (from the line of mean high water springs out to 12 nautical miles). The line between the resources managed under this Plan and those managed under the Regional Plan: Coast, where a water body enters the coastal marine area, is shown in Schedule 12 of this Plan.

11.3.3.3 Regional Plan: Waste

Consents may also be required under the Regional Plan: Waste for the following activities:

- The discharge of hazardous wastes;
- The disturbance of land at contaminated sites;
- The operation of facilities for the treatment or disposal of hazardous wastes;
- The discharge of oil or substances containing oil as a dust suppressant on formed roads;
- The discharge of contaminants from landfills (including farm landfills, cleanfill landfills, greenwaste landfills and offal pits); and
- The discharge of contaminants from composting and silage production.

INTRODUCTION TO THE RULES